Hardwick Company, Inc. and International Brother-hood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 583. Cases 10-CA-16384(E) and 10-CA-16524(E)

April 26, 1983

SUPPLEMENTAL DECISION AND ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

By Members Jenkins, Zimmerman, and Hunter

On August 11, 1982, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding affirming the Administrative Law Judge's findings that Respondent committed serious unfair labor practices in violation of Section 8(a)(1) of the Act, including interrogating employees concerning their union activities, threatening employees with plant closure and/or sale and with discharge because of their union activities, and soliciting employees to sign a petition withdrawing their support for the Union as a means of saving their jobs. The Board also adopted the Administrative Law Judge's findings that Respondent did not violate Section 8(a)(3) of the Act by transferring certain equipment from its Bessemer, Alabama, facility to its Birmingham, Alabama, facility, and by laying off employees on October 30 and November 6 and 13, 1980.

Thereafter, Respondent filed with the Board an "Application for Award of Fees and Expenses" and a "Motion To Withhold Net Worth Statement From Public" pursuant to the Equal Access to Justice Act, P.L. 96-481, 94 Stat. 2325, hereinafter called EAJA, and Section 102.143, et seq., of the Board's Rules and Regulations, Series 8, as amended, hereinafter the Board's Rules. In its application, Respondent argues that, as the prevailing party in the 8(a)(3) aspects of the case, it is entitled to relief under EAJA. On September 17, 1982, pursuant to Section 102.148(b) of the Board's Rules the Board ordered that the matter be referred to the Administrative Law Judge for appropriate action. On November 17, 1982, the General Counsel filed an answer and a memorandum in support thereof with the Administrative Law Judge, and on December 8, 1982, Respondent filed a response to the General Counsel's answer.

On December 29, 1982, the Administrative Law Judge issued a Supplemental Decision in which he ordered that the application be dismissed as untime-

ly filed.² In so finding, the Administrative Law Judge noted that the Board, in its Order referring the application to the Administrative Law Judge, stated that Respondent had filed its application on September 13, 1982. EAJA, section 504(a)(2), and Section 102.148(a) of the Board's Rules provide that an application for an award under EAJA may be filed no more than 30 days after entry by the Board of its final judgment. As stated above, the Board's Decision and Order in this proceeding was issued on August 11, 1982, 33 days prior to the date on which the Board stated that it had received Respondent's application. Thus, in reliance on Monark Boat Co., 262 NLRB 994 (1982), the Administrative Law Judge found that Respondent's application was untimely filed and ruled that the Board lacks jurisdiction over the application. Accordingly, the Administrative Law Judge dismissed the application. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its exceptions and brief, Respondent contests the Administrative Law Judge's finding that its application was untimely filed. In this connection, Respondent states that its application was delivered to the Board and signed for during business hours on September 10, 1982, 30 days after entry of the Board's Order. In support of this contention, Respondent attached as exhibits to its brief a copy of a courier delivery receipt and a letter from the courier indicating that a package from Respondent, addressed to the General Counsel, was received by the Board on September 10, 1982.

In her answering brief, counsel for the General Counsel states that, as indicated by Respondent's exhibits, Respondent's application was addressed to the General Counsel and received by the General Counsel on September 10, 1982. Counsel for the General Counsel asserts that Respondent has produced no evidence to establish that Respondent's application was timely filed with the Board as required by the Board's Rules. In the alternative, counsel for the General Counsel incorporates her answer to Respondent's application and argues that Respondent's application must be dismissed on the merits.

^{1 263} NLRB 302.

³ The Administrative Law Judge also noted that Respondent failed to serve the Charging Party with copies of its application and response as required under Sec. 102.148(a) and 102.149(a) and (b) of the Board's Rules. However, in light of the dismissal of the application as untimely filed, the Administrative Law Judge found it unnecessary to discuss the ramifications of Respondent's failure to serve the Charging Party. We do not pass on that issue at this time.

Inasmuch as Respondent's application was received at the Board in Washington, D.C., on September 10, 1982, we find merit in Respondent's exception to the Administrative Law Judge's finding that the application was untimely filed. It appears that, due to an administrative error, the Board inadvertently indicated in its September 17, 1982, Order referring the application to the Administrative Law Judge that Respondent's application was not filed until September 13, 1982. As it has been

established that Respondent's application was filed in a timely manner, we shall order that this matter be remanded to the Administrative Law Judge for further proceedings under EAJA.

ORDER

It is hereby ordered that the above-entitled matter be, and it hereby is, remanded to the Administrative Law Judge for further proceedings.